

JUDGE ABRAMS

13 CV 6674

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION NO.

MARTIN HODAS, individually,)
LARRY SIMON, individually,)
PAUL NUSZEN, individually,)
LEAP FROG CAPITAL, LLC,)
LEON FRENKEL, Individually,)
FREDRICK FINOCCHIARO, Individually,)
CHARLES FAMOSO, Individually)

Plaintiffs)

vs.)

XIOM CORPORATION, EQUISOL LLC)
ENVIRONMENTAL INFRASTRUCTURE)
HOLDINGS CORP.,)
ANDREW B. MAZZONE, Individually,)
JAMES W. ZIMBLER, Individually,)
MICHAEL D. PARRISH, Individually,)

Defendants)



COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Martin Hodas ("Hodas"), Larry Simon ("Simon"), Leap Frog Capital, LLC, ("Leap Frog"), and Paul Nuszen ("Nuszen") Leon Frenkel ("Frenkel"), Fred

Finocchiaro (“Finocchiaro”) and Charles Famoso (“Famoso”) (hereinafter collectively referred to as “Plaintiffs”) for their complaint against Defendants’ XIOM Corporation, a reporting act company (“XIOM”), Equisol, a privately held limited liability company, (“Equisol”), Environmental Infrastructure Holdings Corporation (“EIHC”), a reporting act company, Andrew B. Mazzone (“Mazzone”), James W. Zimbler (“Zimbler”), and Michael D. Parrish (“Parrish”) (collectively sometimes referred to as, “Defendants” or “RICO Defendant(s)”, as the case may be), by and through its undersigned counsel, states and alleges as follows:

Introduction

1. This is a case of multiple past and continuing acts of willful, intentional and direct violations under the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”); specifically under the predicate acts of mail and wire fraud under Sections 18 U.S.C. § 1341 and 18 U.S.C. § 1343, respectively, orchestrated by Defendants over a several year period commencing at least, or upon information and belief earlier, in March of 2008, against Plaintiffs and others in the investment community.

Jurisdiction and Venue

2. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 because this action presents questions under federal law under the RICO Act 18 U.S.C (1961-1968); specifically pursuant to mail fraud 18 U.S.C. § 1341 and wire fraud 18 U.S.C § 1343 federal statutes and 15 U.S.C. § 1051, *et seq.* The

Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

3. The Court has personal jurisdiction over Defendants because the Defendants conduct business in New York State. Also, Defendants have purposefully availed themselves of the activities in this forum, and this Complaint arises out of those activities; namely intentional violations under RICO in New York causing past and ongoing injury to Plaintiffs.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (c), because a substantial part of the events giving rise to the claim occurred, and continue to occur, in the Southern District of New York. The damage to Plaintiffs described herein has and continues to take place in the Southern District of New York and elsewhere.

THE PARTIES

5. Plaintiff Martin Hodas, a senior citizen, resides at 271-19E, Grand Central Parkway Floral Park, NY 11005.

6. Plaintiff Paul Nuszen, a senior citizen, resides at 148 Swan Lake Drive, Patchogue New York 11772.

7. Plaintiff Larry Simon resides at 11 Whippoorwill Lane in Quogue New York 11959-0472.

8. Plaintiff Leap Frog is a Delaware limited liability Company with offices located at P.O box 472 Quogue New York 11959.

9. Plaintiff Leon Frenkel resides at 1600 Flat Rock Road, Penn Valley, PA 19072.
10. Plaintiff Fred Finocchiaro is an individual who resides at 20 No. Raymond Avenue #350 Pasadena, California 91103.
11. Plaintiff Charles Famoso is an individual who resides at 18 New Castle Avenue Plainview, New York 11803.
12. Defendant XIOM Corporation located at Four Tower Bridge 200 Barr Harbor Drive, Suite 400, West Conshohocken, PA 19428.
13. Defendant Equisol LLC, is a Delaware limited liability Company located at Four Tower Bridge 200 Barr Harbor Drive, Suite 400, West Conshohocken, PA 19428.
14. Defendant Environmental Infrastructure Holdings Corporation is a Delaware corporation with offices located at Four Tower Bridge 200 Barr Harbor Drive, Suite 400, West Conshohocken, PA 19428.
15. Upon information and belief, Defendant Michael D. Parrish resides at 31 Fox Ridge Drive, Malvern, PA 19355.
16. Defendant James W. Zimbler resides at 165 Fernleaf Court, State College, PA 16801.
17. Defendant Andrew B. Mazzone resides at 513 Dryden Street, Westbury, NY 11590.

FACTS

XIOM, EIHC and Equisol; Business Nature and Corporate Relationships

18. By way of background, XIOM, previously a reporting act public company, (and, as averred below, filed for bankruptcy before the United Bankruptcy Court District of Delaware in March 2011, which bankruptcy was dismissed and the Delaware Bankruptcy Court closed the case on October 13, 2011), was purported to be a technology business offering delivery of a proprietary plastic powder coating technology that offered the delivery of plastic powder coating utilizing the “XIOM 1000 System”. In a form 8K filed by EIHC associated with the merger of XIOM into a subsidiary of Equisol on or about December 7, 2009 with the Securities and Exchange Commission (“SEC”), XIOM claimed that its proprietary technology coating process, among other unique and proprietary attributes, “allowed for a coating process that is completely portable and can be applied anywhere, not necessarily in a factory setting, and can be applied without use of an oven to cure the coating, and can be applied to most substrates in addition to the metal substrate to which powder coatings are traditionally applied in a factory, using an oven.” (hereinafter referred to as the “XIOM Technology”).

19. Equisol, a privately held limited liability company, is an equipment solutions provider specializing in the water and wastewater industry. Equisol claims to provide, “cost effective equipment strategies to allow users of water and producers of wastewater to achieve profitability while focusing on their core business activities.”